FACT SHEET

March 1997

NEPA Call-In

"Designed to meet the NEPA compliance needs of GSA's realty professionals"

Summaries of NEPA, Associated Laws and Executive Orders

What's Inside...

Introduction

History of NEPA

Many of the Federal environmental regulatory statutes of the 1970's sought to impose limits on pollution by private entities. In contrast, the National Environmental Policy Act of 1969 (NEPA) was promulgated to redirect the decision making process of Federal agencies and require consideration of environmental impacts.

Decision making authority in the Federal government has been delegated to a variety of agencies whose principle missions are very specific such as housing Federal facilities, building roads, national defense, and expanding utility supply. Because these agencies have very specific goals, many did not systematically assess the environmental impacts of their decisions or consider alternative ways of accomplishing their mission which were less damaging to the environment. Often the benefits of development were overemphasized and effects to the environment deemphasized since no procedure existed to assess the effects of interrelated activities among different agencies. NEPA requires all Federal agencies to consider the values of environmental preservation and prescribes procedural measures to ensure that those values are in fact fully respected.

Purpose of NEPA

The basic doctrine of NEPA requires the Federal Government to use all practicable means and measures to protect environmental values. Section 101 (b) of the Act states "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy" to avoid environmental degradation, preserve historic, cultural, and natural resources, and "promote the widest range of beneficial uses of the environment without undesirable and unintentional consequences." Therefore, NEPA makes environmental protection a part of the mandate of every Federal agency and department. NEPA requires analysis and a detailed statement of the environmental impact of any proposed Federal action which significantly affects the quality of the human environment. Each agency designates a "responsible official" who must ensure NEPA issues are addressed as part of the agency's actions. All agencies must use a systematic interdisciplinary approach to environmental planning and evaluation of projects which may have an affect on man's environment.

Environmental Assessments and Environmental Impact Statements

The Council on Environmental Quality's (CEQs) regulations to implement NEPA (Title 40 Code of Federal Regulations Parts 1500-1508) detail the process of preparing Environmental Assessments (EAs) and Environmental Impact Statements (EISs). EAs are documents prepared in order to determine if an EIS is necessary. Although a specific format for EAs is not prescribed in the regulations, EAs should include discussions of the need for the proposed action, alternatives including the proposed action, and a list of agencies and persons consulted. If an agency determines, through an EA, the proposed action will not have a significant effect on the human environment, it need not prepare a EIS but must prepare a Finding of No Significant Impact (FONSI) (Title 40 CFR 1508.13, "Finding of no significant impact"). An agency is not required to prepare an EA or EIS for ac-

tions which do not have the potential for significantly affecting the quality of the human environment either individually or cumulatively. These actions, known as "categorical exclusions," are specified in an agencies' procedures to implement the CEQ regulations as required by 40 CFR 1507.3, "Agency procedures."

If the agency determines the proposed action could have a significant effect on the human environment, an EIS must be prepared. Title 40 CFR 1502.10, "Recommended format," describes the format for EIS preparation. Agencies should focus on significant environmental issues and alternatives to the proposed action.

Environmental Factors and Associated Laws and Executive Orders

When considering the affected environment, physical, biological, economic, and social environmental factors must be considered. In addition to NEPA there are other environmental laws as well as Executive Orders (EOs) to be considered when preparing EAs and EISs. These laws and EOs may be grouped under one or more of the following factors considered during an EIS: physical, biological, economic, and social.

Physical Factors

Clean Air Act (CAA) of 1970 and Amendments of 1977 and 1990

The CAA recognizes that increases in air pollution result in danger to public health and welfare. To protect and enhance the quality of the Nation's air resources, the CAA authorizes the Environmental Protection Agency (EPA) to set six National Ambient Air Quality Standards (NAAQSs) which regulate carbon monoxide, lead, nitrogen dioxide, ozone, sulfur dioxide, and particulate matter pollution emissions. The CAA seeks to reduce or eliminate the creation of pollutants at their source, and designates this responsibility to State and local governments. States are directed to utilize financial and technical assistance as well as leadership from the Federal government to develop implementation plans to achieve NAAQS. Geographic areas are officially designated by the EPA as being in attainment or non-attainment to pollutants in relation to their compliance with NAAQS. Geographic regions established for air quality planning purposes are designated as Air Quality Control Regions (AQCR). Pollutant concentration levels are measured at designated monitoring stations within the AQCR. An area is designated as unclassifiable where insufficient monitoring data exists. Section 309 of the CAA authorizes the EPA to review and comment on impact statements prepared by other agencies.

GSA should consider what effect an action may have on NAAQS due to short-term increases in air pollution during construction as well as long-term increases resulting from changes in traffic patterns. For actions in attainment areas, GSA may also be subject to EPA's Prevention of Significant Deterioration (PSD) regulations. These regulations apply to new major stationary sources and modifications to such sources. Although few GSA facilities will actually emit pollutants, increases in pollution can result from a change in traffic patterns or volume. Section 118 of the CAA waives Federal immunity from complying with the CAA and states all Federal agencies will comply with all Federal and State approved requirements.

Clean Water Act (CWA) of 1977

The CWA, a 1977 amendment to the Federal Water Pollution Control Act of 1972, is administered by the EPA and sets the basic structure for regulating discharges of pollutants into U.S. waters. The CWA requires the EPA to establish water quality standards for specified contaminants in surface waters and forbids the discharge of pollutants from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by EPA or the appropriate State if it has assumed responsibility. Section 404 of the CWA establishes a Federal program to regulate the discharge of dredged and fill material into waters of the United States. Section 404 permits are issued by the US Army Corps of Engineers (USACE). Waters of the United States include interstate and intrastate lakes, rivers, streams, and wetlands which are used for commerce, recreation, industry, sources of fish, and other purposes. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. GSA should consider the impact on water quality from actions such as the discharge of dredge or fill material into U.S. waters from construction, or the discharge of pollutants as a result of facility occupation.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 and the Superfund Amendments and Reauthorization Act of 1986 (SARA)

CERCLA authorizes the EPA to respond to spills and other releases of hazardous substances to the envi-

ronment, and authorizes the National Oil and Hazardous Substances Pollution Contingency Plan. CERCLA also provides a Federal "Superfund" to respond to emergencies immediately. Although the "Superfund" provides funds for clean up of sites where potentially responsible parties (PRPs) cannot be identified, the EPA is authorized to recover funds through damages collected from responsible parties. This funding process places the economic burden for cleanup on polluters. SARA mandates strong cleanup standards, and authorizes the EPA to use a variety of incentives to encourage settlements. Title III of SARA authorizes the Emergency Planning and Community Right to Know Act (EPCRA), which requires facility operators with "hazardous substances" or "extremely hazardous substances" to prepare comprehensive emergency plans and to report accidental releases. EO 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements," requires Federal agencies to comply with the provisions EPCRA.

If GSA acquires a contaminated site it can be held liable for clean up as the property owner/operator. GSA can also incur liability if it leases a property, as the courts have found lessees liable as "owners." However, if GSA exercises due diligence by conducting a Phase I Environmental Site Assessment, it may claim the "innocent purchaser" defense under CERCLA. According to Title 42 United States Code (USC) 9601(35), the current owner/operator must show it undertook "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" before buying the property to use this defense.

Resource Conservation and Recovery Act (RCRA) of 1976

RCRA, an amendment to the Solid Waste Disposal Act, authorizes the EPA to provide for "cradle-to-grave" management of hazardous waste, and sets a framework for the management of non-hazardous municipal solid waste. Under RCRA, hazardous waste is controlled from generation to disposal through tracking and permitting systems, and restrictions and controls on the placement of waste on or into the land. Under RCRA, a waste is defined as hazardous if it is ignitable, corrosive, reactive, toxic or listed by the EPA as being hazardous. With the 1984 Hazardous and Solid Waste Amendments (HSWA), Congress targeted stricter standards for waste disposal and encouraged pollution prevention by prohibiting the land disposal of particular wastes. The HSWA amendments strengthen control of both hazardous and nonhazardous waste and emphasize the prevention of pollution of groundwater.

Safe Drinking Water Act (SDWA) of 1974

The SDWA establishes a Federal program to monitor and increase the safety of all commercially and publicly supplied drinking water. Congress amended the SDWA in 1986, mandating dramatic changes in nationwide safeguards for drinking water and establishing new Federal enforcement responsibility on the part of the EPA. The 1986 amendments to the SDWA require the EPA to establish Maximum Contaminant Levels (MCLs), Maximum Contaminant Level Goals (MCLGs) and Best Available Technology (BAT) treatment techniques for organic, inorganic, radioactive, and microbial contaminants, and turbidity. MCLGs are maximum concentrations below which no negative human health effects are known to exist. The 1996 amendments set current Federal MCLs, MCLGs, and BATs for organic, inorganic, microbiological, and radiological contaminants in public drinking water supplies.

Coastal Zone Management Act (CZMA) of 1972

The CZMA is concerned with the effective management, beneficial use, protection, and development of the Nation's coastal zone. The coastal zone refers to the coastal waters and the adjacent shorelines including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches, and includes the Great Lakes. The CZMA declares a National policy to preserve, protect and develop, and where possible restore or enhance the resources of the Nation's coastal zone. The CZMA encourages states to exercise their full authority over the coastal zone, through the development of land and water use programs in cooperation with Federal and local governments. States may apply for grants to help develop and implement management programs to achieve wise use of the land and water resources of the coastal zone. Development projects affecting land or water use or natural resources of a coastal zone, must ensure the project is, to the maximum extent practicable, consistent with the state's coastal zone management program.

Toxic Substance Control Act (TSCA) of 1976

Title I of the Toxic Substance Control Act established requirements and authorities to identify and control toxic chemical hazards to human health and the environment. TSCA authorized the EPA to gather information on chemical risks, require companies to test chemicals for toxic effects, and regulate chemicals with unreasonable risk. TSCA also singled out

polychlorinated bi-phenyls (PCBs) for regulation and as a result are being phased out. TSCA and its regulations govern the manufacture, processing, distribution, use, marking, storage, disposal, clean-up, and release reporting requirements for numerous chemicals like PCBs. PCBs are persistent when released into the environment and accumulate in the tissues of living organisms. They have been shown to cause adverse health effects on laboratory animals and may cause adverse health effects in humans. TSCA Title II provides statutory framework for "Asbestos Hazard Emergency Response," which applies only to schools. TSCA Title III, "Indoor Radon Abatement," states indoor air in buildings of the United States should be as free of radon as the outside ambient air. Federal agencies are required to conduct studies on the extent of radon contamination in buildings they own. TSCA Title IV, "Lead Exposure Reduction," directs Federal agencies to "conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards." Further, any Federal agency having jurisdiction over a property or facility must comply with all Federal, State, interstate, and local requirements concerning lead-based paint.

Wild and Scenic Rivers Act (WSRA) of 1968

By recognizing the remarkable values of specific rivers of the Nation, the WSRA provides for a wild and scenic river system. These selected rivers and their immediate environment are preserved in a free-flowing condition, without dams or other construction. The policy not only protects the water quality of the selected rivers but also provides for the enjoyment of present and future generations. Any river in a free-flowing condition is eligible for inclusion, and can be authorized as such by an Act of Congress, an act of State legislature, or by the Secretary of Interior upon the recommendation of the Governor of the State(s) through which the river flows.

EO 11988, "Floodplain Management," May 24, 1977

EO 11988 directs agencies to consider alternatives to avoid adverse effects and incompatible development in floodplains. An agency may locate a facility in a floodplain if the head of the agency finds there is no practicable alternative. If it is found there is no practicable alternative, the agency must minimize potential harm to the floodplain, and circulate a notice explaining why the action is to be located in the floodplain prior to taking action. Finally, new construction in a floodplain must apply accepted floodproofing and flood protection to include elevating structures above the base flood level rather than filling in land.

EO 11990, "Protection of Wetlands," May 24, 1977

EO 11990 directs agencies to consider alternatives to avoid adverse effects and incompatible development in wetlands. Federal agencies are to avoid new construction in wetlands, unless the agency finds there is no practicable alternative to construction in the wetland, and the proposed construction incorporates all possible measures to limit harm to the wetland. Agencies should use economic and environmental data, agency mission statements, and any other pertinent information when deciding whether or not to build in wetlands. EO 11990 directs each agency to provide for early public review of plans for construction in wetlands.

Pollution Prevention Act (PPA) of 1990

The PPA encourages manufacturers to avoid the generation of pollution by modifying equipment and processes, redesigning products, substituting raw materials, and making improvements in management techniques, training, and inventory control. EO 12856, "Federal Compliance with Right-to Know Laws and Pollution Prevention Requirements," requires Federal agencies to comply with the provisions of the PPA, and also requires Federal agencies to ensure all necessary actions are taken to prevent pollution. In addition, in Federal Register Volume 58 Number 18 (January 29, 1993), the Council on Environmental Quality provides guidance to Federal agencies on how to "incorporate pollution prevention principles, techniques, and mechanisms into their planning and decision making processes and to evaluate and report those efforts, as appropriate, in documents pursuant to NEPA."

Biological Factors

Endangered Species Act (ESA) of 1973

The ESA establishes a Federal program to conserve, protect and restore threatened and endangered plants and animals and their habitats. The ESA specifically charges Federal agencies with the responsibility of using their authority to conserve threatened and endangered species. All Federal agencies must insure any action they authorize, fund or carry out is

not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction of critical habitat for these species, unless the agency has been granted an exemption. The Secretary of the Interior, using the best available scientific data, determines which species are officially endangered or threatened, and the U.S. Fish and Wildlife Service (FWS) maintains the list. A list of Federal endangered species may be obtained from the Endangered Species Division, U.S. Fish and Wildlife Service (703-358-2171). States may also have their own lists of threatened and endangered species which may be obtained by calling the appropriate State Fish and Wildlife office. Some species, such as the bald eagle, also have laws specifically for their protection (e.g., Bald Eagle Protection Act).

Fish and Wildlife Coordination Act (FWA) of 1958

By recognizing the vital contribution of wildlife resources, the FWA ensures wildlife conservation receives equal consideration and is coordinated with other features of water-resource development programs. This goal is achieved through the planning, development, maintenance, and coordination of wildlife conservation and rehabilitation. The FWA authorizes the Secretary of Interior to assist Federal, State, public, and private agencies in developing, protecting, rearing, and stocking of all species of wildlife. Federal agencies are required to consult with the U. S. Fish and Wildlife Service, Department of Interior, and State officials whenever the agency proposes or authorizes the modification of any body of water. The consultation should address the conservation of wildlife resources in connection with the proposed or authorized water-resource development.

EO 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970

EO 11514 states the President, with assistance from the CEQ, will lead a national effort to provide leadership in protecting and enhancing the environment for the purpose of sustaining and enriching human life. Federal agencies are directed to meet national environmental goals through their policies, programs, and plans. Agencies should also continually monitor and evaluate their activities to protect and enhance the quality of the environment. Consistent with NEPA, agencies are directed to share information about existing or potential environmental problems with all interested parties, including the public, in order to obtain their views.

Economic Factors

EO 12072, "Federal Space Management," August 16, 1978

EO 12072 directs agencies to give first consideration to centralized community business areas when meeting Federal space needs except where it is otherwise prohibited. Use of space in centralized community business areas is designed to conserve existing urban resources and encourage the development and redevelopment of cities. As a result, the Nation's cities will be strengthened and become attractive places to live and work. When meeting Federal space needs, the availability of existing Federally controlled facilities, and buildings with historic, architectural, or cultural significance should be considered. The process should also consider conformity with the actions and programs of other Federal agencies as well as compatibility with State, regional, or local development, redevelopment, or conservation objectives.

EO 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," May 21, 1996

EO 13006 instructs the Federal Government, when locating Federal facilities, to give first consideration to historic properties within historic districts in central cities. Other developed or undeveloped sites within historic districts should be considered if no such property is suitable. Actions should be compatible with current laws, regulations, and policy, and provide the maximum benefit and least burden to society. Subsequent renovation or construction must be architecturally compatible with the surrounding district. Federal agencies are encouraged to contact the Advisory Council on Historic Preservation, (202) 606-8503, for guidance. This instruction reaffirms the commitment to strengthen our Nation's cities, and is subject to Section 801 of Title VI of the Rural Development Act of 1972, and EO 12072, "Federal Space Management."

Public Building Cooperative Use Act of 1976

The Public Building Cooperative Use Act requires Federal agencies, when feasible, to acquire and use space in buildings of historic, architectural, or cultural significance. Federal agencies are also required to encourage the location of commercial, cultural,

educational, and recreational facilities within public buildings, and encourage public access to these buildings to complement the resources of the neighborhood. Agencies must also encourage the public to use these buildings for cultural, educational, and recreational activities. This Act encourages the "outlease" of Federal facilities. Outlease funds from historic buildings are dedicated to a fund for the preservation of historic buildings.

Title 40 United States Code 310, "Abandoned Property"

This section of the United States Code authorizes the Administrator of General Services to make contracts and provisions for the preservation, sale, or collection of wrecked, abandoned, or derelict property within the jurisdiction of the United States.

Social Factors

Environmental Quality Improvement Act (EQIA) of 1970

The EQIA ensures each Federal agency conducting or supporting public works activities affecting the environment implements policies established under existing law. The EQIA also created the Office Environmental Quality to provide professional and administrative staff for the Council on Environmental Quality (CEQ). The Director of the Office of Environmental Quality assists and advises the President on Federal policies and programs affecting environmental quality. The Office of Environmental Quality reviews the adequacy of existing environmental monitoring and predicting systems, and assists Federal agencies in appraising the effectiveness of existing and proposed facilities which affect environmental quality.

National Historic Preservation Act (NHPA) of 1966

As stated in the NHPA, it is the policy of the Federal government to foster conditions where modern society can coexist with prehistoric and historic resources. The NHPA establishes the Advisory Council on Historic Preservation (Council) which advises the President, Congress, and Federal agencies on historic preservation issues. The Council is responsible for implementing Section 106 of NHPA. Section 106 requires Federal agencies to consider the effects of their actions on historic properties, and give the Council an opportunity to comment on the proposed actions. Section 106 compliance is accomplished through a 5-step process:

1. Identification and evaluation of historic properties;
2. Assessing effects;
3. Consultation;
4. Council comment; and
5. Proceeding.

GSA should coordinate studies and documents prepared under Section 106 with NEPA where appropriate. However, NEPA and NHPA are separate statutes and compliance with one does not constitute compliance with the other. For example, actions which qualify for a categorical exclusion under NEPA, may still require Section 106 review under NHPA. It is the responsibility of the agency official to identify properties in the area of potential effects, and whether they are included or eligible for inclusion in the National Register of Historic Places. Section 110 of the NHPA requires Federal agencies to identify, evaluate, and nominate historic property under agency control to the National Register of Historic Places. Section 110 also requires Federal agencies to have in place Section 106 compliance procedures.

Archaeological Resource Protection Act (ARPA) of 1979

The ARPA secures the protection of archeological resources and sites on public and Indian lands. The ARPA fosters the exchange of information about these resources between governmental agencies, the professional archaeological community, and private individuals who have collections of archeological resources. Archeological resources are defined as any material remains of past human life or activities, and must be at least 100 years old. Before archeological resources are excavated or removed from public or Indian lands, the Federal land manager for the site must issue a permit detailing the time, scope, location and specific purpose of the proposed work. There are strict guidelines for the issuance of a permit, and if the site is on Indian lands, a permit can only be granted after the Indian tribe owning the land has consented to the excavation.

American Indian Religious Freedom Act of 1978 and Amendments of 1994

The American Indian Religious Freedom Act of 1978 recognizes that freedom of religion for all people is an inherent right, and traditional American Indian religions are an indispensable and irreplaceable part of Indian life. It also recognized the lack of Federal policy on this issue and made it the policy of the United States to protect and preserve the inherent right of religious freedom for Native Americans. The 1994

Amendments provide clear legal protection for the religious use of peyote cactus as a religious sacrament. Federal agencies are responsible for evaluating their actions and policies to determine if changes should be made to protect and preserve the religious cultural rights and practices of Native Americans. These evaluations must be made in consultation with native traditional religious leaders.

Native American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act states any Native American cultural item discovered on Federal or tribal lands is owned by the lineal descendants of the Native American. If lineal descendants cannot be determined, the object(s) are the property of the Native American tribe who owns the land where the object(s) were discovered or the tribe with the closest cultural affiliation with the object(s). The discovery of Native American cultural items on Federal or tribal land must be reported to the appropriate Indian tribe and the head of the United States agency with management authority over the site. If the discovery was a result of construction, mining, logging, or related action, activity in the area must stop and the items must be protected. Activity may resume 30 days after notification of the findings is certified by the head of the agency or the appropriate tribe or organization.

Religious Freedom Restoration Act of 1993

The Religious Freedom Restoration Act recognized laws assumed to be "neutral" toward religion may, in fact, burden a person's exercise of religion provided by the First Amendment to the Constitution. The Act applies to all Federal and State law and states the Government cannot substantially burden a person's exercise of religion without justification. The Government can burden a person's exercise of religion only if the burden is a result of furtherance of a compelling governmental interest, and it is the least restrictive means to further that interest. The NEPA process should determine if the proposed action will have an impact on the protections provided by this Act.

EO 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971

EO 11593 directs the Federal Government to provide leadership in the preservation, restoration, and maintenance of the historic and cultural environment. Federal agencies are required to locate and evaluate all Federal sites under their jurisdiction or control which may qualify for listing on the National Register of Historic Places. Agencies must allow the Advisory Council on Historic Preservation to comment on the alteration, demolition, sale, or transfer of property which is likely to meet the criteria for listing as determined by the Secretary of the Interior in consultation with the State Historic Preservation Officer. Agencies must also initiate procedures to maintain Federally owned sites listed on the National Register.

EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994

EO 12898 directs Federal agencies to make achieving environmental justice part of their mission. Agencies must identify and address adverse human health and/or environmental effects its activities have on minority and low-income populations, and develop agency-wide environmental justice strategies. The strategy must list "programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations, ensure greater public participation, improve research and data collection relating to the health of and environment of minority populations and low-income populations, and identify differential patterns of consumption of natural resources among minority populations and low-income populations." A copy of the strategy and progress reports must be provided to the Federal Working Group on Environmental Justice. Responsibility for compliance with this EO lies with each Federal agency.

In summary, there are many Laws, Presidential Executive Orders, and related authorities to be considered when preparing EAs and EISs under NEPA. NEPA Call-In provides technical assistance and information to GSA personnel in understanding and implementing the complex requirements of NEPA and related environmental initiatives and regulations. For assistance, contact NEPA Call-In by phone, (202) 208-6228; fax, (202) 219-7677; or e-mail, CALL-IN@gsa.gov. You are also invited to visit our World Wide Web page at:

http://www.gsa.gov/pbs/pt/call-in/nepa.htm.

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Safe Drinking Water Act of 1974 and Amendments of 1986.

Superfund Amendments and Reauthorization Act of 1986.

Title 40 CFR, Chapter V "Council on Environmental Quality," Part 1500-1508.

Title 40 United States Code 310, "Abandoned Property."

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NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service. NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

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